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No. 90-59

Supreme Court, U.S.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1990

STEWART CASKIE,
Petitioner,

VS.

GLENN R. HECHINGER,
Respondent.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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QUESTION PRESENTED

Whether the Limitation of Liability Act, 46 U.S.C. § 181, *et seq.*, applies to pleasure vessels.

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Stewart Caskie, and the respondent, Glenn R. Hechinger.

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 890 F.2d 202 (9th Cir. 1990), and is attached as Appendix "A" to Caskie's petition.

The Findings of Fact and Conclusions of Law of the United States District Court for the Northern District of California (Orrick, D.J.) are reported at 1988 AMC 2857, and are attached as Appendix "B" to Caskie's petition.

JURISDICTION

Invoking jurisdiction under 46 U.S.C. § 181 *et seq.* (the Limitation of Liability Act), respondent brought this suit in the Northern District of California. On March 7, 1988, judgment was entered in favor of respondent.

On petitioner's appeal, the Ninth Circuit, on November 27, 1989, entered a judgment and an opinion affirming the District Court's judgment. On March 7, 1990, the court denied petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc.

On May 16, 1990, Justice O'Connor ordered that the time for filing a petition for writ of certiorari in this case be extended, up to and including July 5, 1990.

The jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

46 U.S.C. § 183(a):

The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

46 U.S.C. § 188:

Except as otherwise specifically provided therein, the provisions of sections 175, 182, 183, 183b to 187, and 189 of this title shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

STATEMENT OF THE CASE

This action arises out of the abandonment of the 49-foot trawler, WYNN D II, near the South Channel entrance to San Francisco Bay on December 2, 1985. The WYNN D II was approximately halfway through the Channel when breaking waves

20 to 25 feet high suddenly surrounded the vessel. The WYNN D II sought safety by turning its bow to the west, attempting to reach deeper water beyond the breaking waves. Petitioner, Cas-
kie, injured his back when the vessel dropped from the crest of one wave into the trough of the next, the force of the sea throwing him to the floor of the wheelhouse.

The WYNN D II had been leased by respondent, Glenn R. Hechinger, and the parties have stipulated that he was the "owner" of the vessel. Through an experienced yacht broker, Hechinger arranged to have the vessel delivered to him in Alameda, California, from its berth in Newport Beach, California, by an experienced delivery skipper, Paul Stevenson. Stevenson had been a delivery skipper for 20 years. He had previously delivered 58 vessels, varying from 27 to 147 feet in length, up the California Coast without incident. Stevenson hired three experienced crew members, including petitioner, for the voyage north.

On the day before the voyage began, the crew inspected the structural elements of the vessel, its hoses, delivery systems, navigational lights and radio. Stevenson found the vessel to be structurally fit and safe for the trip north.

During the voyage, the WYNN D II rendezvoused with another vessel, the GIRLFRIEND III, outside Los Angeles Harbor, and headed north for San Francisco. Sea conditions were comfortable until the vessel reached the South Channel entrance to the Golden Gate outside San Francisco Bay. As the WYNN D II was approximately halfway through the Channel, it encountered unusually heavy seas and the petitioner was thrown to the floor of the wheelhouse and injured.

Hechinger filed a Complaint for Exoneration From or Limitation of Liability pursuant to 46 U.S.C. § 185. At trial, Cas-
kie claimed that the WYNN D II was unseaworthy, and that there had been active and passive negligence by the owner and skipper of the vessel. The District Court held that, because the vessel was safe and seaworthy, and because no negligence existed on the part of Hechinger or Stevenson and the WYNN D II crew, the cause of the accident was an Act of God or peril of the sea.

Petitioner appealed. Among other things, he asserted that the Limitation of Liability Act does not apply to pleasure craft such as the WYNN D II. Hence, he asked the court for an order declaring the Act inapplicable to pleasure craft. He also appealed on the merits.

The Court of Appeals affirmed. *Inter alia*, it held "that the limitation provision applies to pleasure boats, and that the district court had jurisdiction to hear this case." *Id.* at 206. Finding also that the District Court's findings of fact were not clearly erroneous, it affirmed the judgment below.

Petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc was denied on March 7, 1990.

SUMMARY OF ARGUMENT

Supreme Court review on writ of certiorari is a matter of judicial discretion. Certiorari will be granted only for special and important reasons.

Under the Limitation of Liability Act, 46 U.S.C. § 181 *et seq.*, a vessel owner faced with liability for an accident may file a complaint in federal district court for exoneration from, or limitation of liability to the value of the vessel itself at the time of the accident. The court, upon obtaining control of the vessel or the value of the vessel from the vessel owner, may enjoin all claimants from maintaining separate suits and require them to file all of their claims in the limitation proceeding. All matters are then tried to the court to determine whether the vessel owner is liable to any of the claimants and, if so, whether the vessel owner's liability is limited under the Act to the value of the vessel.

Limitation of a vessel owner's liability is only granted in those relatively few cases where the vessel owner can prove that he had no privity with, or knowledge of, the acts or omissions which led to liability.

Since at least 1886, the Act has been interpreted by both this Court, and the *eight* Circuit Courts of Appeal that have considered the issue, as extending the protections of the Act to all types

of craft regardless of whether they be commercial or pleasure vessels. The decisions are thoughtful and well reasoned.

Both the clear wording and the legislative history of the statute make it clear that Congress intended the protections of the Act to be equally available to owners of both commercial and pleasure craft. A pleasure boat exception would require that courts draw lines between "pleasure boating" and "commercial boating" on a case-by-case basis. Encouraging the uncertainties sure to be created by factual hair splitting would constitute bad public policy.

There are therefore no important or compelling reasons for granting Caskie's petition.

ARGUMENT

A. There Are No Special And Important Reasons For Granting This Petition In The Circumstances Of This Case

Review on writ of certiorari is a matter of judicial discretion rather than of right. Certiorari will be granted only for special and important reasons. According to Supreme Court Rule 10:

.1 A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(c) When a state court or a United States court of appeals has decided an important question of federal law

which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

For the following reasons there is no reason for this Court to grant this petition in this case.

1. The Supreme Court And All Circuit Courts Of Appeal Have Construed the Limitation Statute To Apply To Pleasure Vessels

The original Limitation Act of 1851 excluded canal boats, barges, lighters and any vessel used in rivers or inland navigation. Not surprisingly, in 1881 a district court denied any benefit of the act to the owner of a pleasure yacht involved in a collision on the Detroit River. See, *The MAMIE*, 5 Fed. 813 (E.D. Mich., 1881) *aff'd.*, 8 Fed. 367 (1881). Then, in 1886, the act was amended by adding the provisions now found in 46 U.S.C., § 188 making limitation applicable to "all seagoing vessels . . . and all vessels used on lakes or rivers or in inland navigation. . ."

Petitioner would have this Court believe that over the decades there has been confusion and debate as to whether the Act was intended and should be construed to apply to noncommercial vessels. However, that is not in fact the case. From the time of the 1886 amendment until 1984 courts, without exception, applied the Limitation Act to pleasure vessels.

On two occasions during this period, this Court itself considered limitation cases involving pleasure yachts. In *Just v. Chambers*, 312 U.S. 383 (1941) this Court held that the Limitation of Liability Act provided the admiralty court with jurisdiction to martial and determine all claims arising out of a carbon monoxide poisoning incident on a yacht.

Just two years later, in *Coryell v. Phipps*, 317 U.S. 406 (1943), this Court considered claims arising out of an explosion on the yacht SEMINOLE. The lower courts had granted the yacht owner limitation of liability. This Court affirmed and instructed that the limitation statute should be administered *broadly and liberally*. *Id.* at 411.

Very recently, in this Court's last term, in *Sisson v. Ruby*, 110 S.Ct. 2892 (1990), this Court held that the Northern District of Illinois had jurisdiction under General Maritime Law over a vessel owner's limitation complaint arising out of a fire which occurred on a pleasure vessel docked at a Lake Michigan marina.¹

Since 1886, in addition to the Ninth Circuit, the Second, Fourth, Fifth, Sixth, Seventh, Eighth, and Eleventh circuits have also applied the Limitation of Liability Act to pleasure vessels.² Many district court decisions have expressly held that the owner of a pleasure vessel may limit his liability.³

In *Complaint of Brown*, 536 F. Supp. 750 (N.D. Ohio 1982) the court noted that:

... Claimant Smith persuasively argues that the application of the Act to the facts in this case leads to an unjust result, and to a perversion of the original purpose of Congress in

¹ Admittedly, this Court in its *Sisson* opinion at fn.1 expressly stated that its holding did not address whether the Limitation of Liability Act may act as an independent basis for federal jurisdiction.

² See, *Complaint of Interstate Towing Co.*, 717 F.2d 752 (2d Cir. 1983); *Richards v. Blake Builder's Supply, Inc.*, 528 F.2d 745 (4th Cir. 1975); *Warnken v. Moody*, 22 Fed 960 (5th Cir. 1927); *Gibboney v. Wright*, 517 F.2d 1054 (5th Cir. 1975); *Holloway Concrete Products Co. v. Beltz Beatty, Inc.*, 293 F.2d 474 (5th Cir. 1961); *Petition of H & H Wheel Service*, 219 F.2d 904 (6th Cir. 1955); *Rautbord v. Ehmann*, 190 F.2d 533 (7th Cir. 1951); *Pritchett v. Kimberling Cone, Inc.*, 568 F.2d 570 (8th Cir. 1977); *Petition of M/V SUNSHINE II*, 808 F.2d 762 (11th Cir. 1987); *Complaint of Keys Jet Ski, Inc.*, 893 F.2d 1225 (11th Cir. 1990).

³ See, *The TRILLORA II*, 76 F. Supp. 50 (E.D.So.Ct. 1947); *The SPARE TIME II*, 36 F. Supp. 642 (E.D. N.Y. 1941); *In Re Read's Petition*, 224 F. Supp. 241 (S.D. Fla. 1963); *The MISTRAL*, 50 Fed. 957 (W.D.N.Y. 1931); *Petition of Colonial Trust Company*, 124 F. Supp. 73 (D. Conn. 1954); *Petition of Klarman*, 295 F. Supp. 1021 (D. Conn. 1968); *The TRIM TOO*, 39 F. Supp. 271 (D. Mass. 1941); *Complaint of Brown*, 536 F. Supp. 750 (N.D. Ohio 1982); *Petition of Porter*, 272 F. Supp. 282 (S.D. Tex. 1967); *The MURIEL*, 25 Fed. 505 (W.D. Wash. 1928).

providing for limitation of liability of shipowners. It is not, however, the role of the judiciary to pass upon the wisdom of legislation, *City of New Orleans v. Dukes*, 427 U.S. 297, 96 S. Ct. 2513, 49 L.Ed.2d 511 (1976), nor to set aside a law, or carve an exception to it, simply because the Court considers it to be harsh or draconian . . .

Id. at 752.

Over the years, some courts have expressed dissatisfaction with the concept of limited liability. See, for example, *Complaint of Paradise Holdings, Inc.*, 795 F.2d 756, 763 (9th Cir. 1986).

Nevertheless, as the Fifth Circuit has recognized, if limitation is to be denied to pleasure boat owners, it must be done by Congress.

[1] At the outset, we acknowledge that contemporary thought, (citations omitted) finds little reason for allowing private owners of pleasure craft to take advantage of the somewhat drastic-for injured claimants-provisions of the Limitation Act. Nevertheless, the cases, as well as Congress, have spoken with a clear voice. And we must heed their words.

Gibboney v. Wright, 517 F.2d 1054 (5th Cir. 1975)

The Fourth Circuit has expressed the view that the issue of the application of the Limitation Act to pleasure boats was settled by this Court in *Coryell v. Phipps*. See *Richards v. Blake Builder's Supply, Inc.*, 528 F.2d 745 (4th Cir. 1975).

Gilmore and Black, critics of the Limitation Act, also concede that the statute applies to all vessels—both commercial and pleasure until Congress amends the statute to provide otherwise:

"The Limitation Act covers any sort of "vessel" from a rowboat up and restriction of its coverage to commercial enterprises could be achieved only by amendment."

Gilmore and Black, *The Law of Admiralty*, (2nd Ed., 1975), at 882.

Petitioner has called attention to the fact that during the past six years, at least eight different district courts have held that the

Limitation of Liability Act does not apply to pleasure craft. See, *Petition for Writ of Certiorari* at 13. Although acknowledging that “[o]rdinarily . . . a conflict between the circuit and district courts does not constitute the sort of conflict which prompts this Court to grant review . . .”, petitioner has cited secondary authority in support of his position that this Court has considered such conflicts as having relevance in the certiorari context. *Id.* Petitioner misconstrues the doctrine in two important respects.

First, this Court has never suggested that such a conflict alone would justify the granting of certiorari. At most, a conflict among decisions of circuit and district courts has been recognized as a factor tending to show the existence of some other more substantial basis for review, such as the importance of the issue involved. In a typical example where certiorari has been granted, the case involved constitutional questions or fundamental freedoms. See *United States v. Constantine*, 296 U.S. 287 (1935) [liquor tax violated Tenth Amendment to the United States Constitution]; *Heffron v. International Society for Krishna Consc.*, 452 U.S. 640 (1981) [involved First Amendment Rights]; *Bear v. Doe* 432 U.S. 438 (1977) [considered whether Title XIX of the Social Security Act requires states that participate in the Medi-Care program to fund the cost of non-therapeutic abortions]; *St. Martin Lutheran Church v. South Dakota*, 451 U.S. 772 (1981) [considered tax exempt status of religious schools]. Here, the issue presented is simply one of statutory construction—whether or not the protections of the Limitation Act apply to pleasure vessels.

More importantly, it is the Circuit Courts of Appeal which are given the first opportunity to harmonize the law of the federal judiciary. To date, they have fulfilled that obligation by engaging in a thoughtful and considered interpretation of the wording and legislative history of the Act.

All Circuit Courts of Appeal that have considered the issue have given guidance to the courts in their circuits and have held that the Limitation Act applies to pleasure vessels. Of the eight district court cases cited in petitioner’s brief, three have been either directly or indirectly overruled. See *Matter of Sisson*, 668 F.Supp 1057 (N.D. Ill. 1987); *Estate of Lewis*, 603 F.Supp. 217

(N.D. Cal. 1987); and *Complaint of Keys Jet Ski, Inc.*, 714 F.Supp. 1057 (S.D. Fla. 1989). Except for *Complaint of Tracey*, 608 F.Supp. 263 (D. Mass. 1985), all of the others fly in the face of the controlling law in their circuits. Simply because an occasional district court may choose to ignore controlling precedent is not enough to warrant that this Court grant this petition to consider the applicability of the Act to pleasure craft when there is no conflict among the circuits on that issue.

2. Rules of Statutory Construction Dictate That Pleasure Vessels Are Included Within The "Any Vessel" Language of the Act

Section 183(a) of the Act provides that:

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

The above language states that limitation is available to the owner of "any vessel." The statute doesn't refer to commercial vessels. Yet, the petitioner would apparently have this court construe the word "vessel" in a restrictive way—to define "vessel" to mean "only vessels used for commercial purposes".

As originally enacted in 1851, the Limitation of Liability Act applied only to seagoing vessels. 3 *Benedict on Admiralty*, 1-22. Section 7 of that act provided;

"This Act shall not apply to the owner or owners of any canal boat, barge, or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation."

In 1886, the exclusion was eliminated by an amendment which is now found in 46 U.S.C., § 188. That section reads:

"Except as otherwise specifically provided therein, the provisions of sections 182, 183, 183b-187, and 189 of this title shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters."

So, since 1886 limitation of liability has been available to owners of all seagoing vessels *and* to owners of *all vessels used on lakes or rivers or in inland navigation*. What could be clearer? Section 183(a) extends limited liability to the owner of "any vessel." Section 188 reinforces the all inclusive nature of the Limitation Act by specifically providing that § 183 applies to "all" vessels. When Congress used the words "any" and "all" it left no room for an argument that pleasure vessels are not covered by the Act. But, there are other grounds just as compelling for concluding that limitation must be applicable to pleasure vessels.

The Limitation Act was further amended in 1936. As will be recalled, § 183(a) limits the vessel owner's liability to "the amount of value or the interest of such owner in such vessel, and the freight then pending." The principal purpose of the 1936 amendments was to increase the limitation fund in certain cases. Section 183(b) provides:

"(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than \$60 per ton of such vessel's tonnage, such portion shall be increased to any amount equal to \$60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts."

Section 183(f), also added in 1936, states:

"(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders,

self-propelled lighters, nondescript selfpropelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such terms as used in section 188 of this title."

The purpose of subsection (f) was obviously to exempt the owners of some vessels covered by § 183(a) from the \$60 per ton minimum provided in § 183(b). Were a "pleasure yacht" not a "vessel" for purposes of § 183(a), there would have been no need to exclude "pleasure yachts" from the new § 183(b) provisions. A number of courts have reached this conclusion:

The amount to which liability may be limited is modified in 46 U.S.C. §§ 183(b)-(e) in the case of seagoing vessels where loss of life or bodily injury is involved; however, pleasure yachts are specifically excluded from the operation of §§ 183(b)-(e), but not from § 183(a), by §§ 183(f). Since, if a pleasure yacht were not a vessel, and hence excluded from the operation of 183(a), it would be unnecessary to exclude it from §§ 183(b)-(e), it is obvious that a pleasure yacht is a vessel for purposes of § 183(a).

Complaint of Brown, supra at 752.

The express exclusion in Section 183(f) of pleasure yachts from the term seagoing vessel as used in subsections (b), (c), (d), and (e) of Section 183, fairly implies that pleasure crafts were intended to be included in Section 183(a) the only provision of the statute hereby applicable.

Petition of Klarman, 295 F. Supp. 1021, 1022 (D. Conn. 1968); see also, *Otto v. Alper*, 489 F. Supp. 953 (D. Del. 1980).

There were at least five reported cases between the 1886 amendments and those of 1936 in which the Limitation of Liability Act was applied to pleasure vessels.⁴ Not one case during

⁴ See *Warnken v. Moody*, 22 F.2d 960 (5th Cir. 1927); *The MISTRAL*, 50 F.2d 957 (W.D.N.Y. 1931); *LUVINA*, 1927 AMC 327 (S.D.N.Y. 1927); *The MURIEL*, 25 F.2d 505 (W.D. Wash. 1928); *The ALOLA*, 228 Fed. 1006 (E.D. Va. 1915).

that period denied that the protections of the Act were available to pleasure boat owners. As of 1936 the nature of a vessel's use or employment was irrelevant to the issue of whether its owner could limit his liability.

We can presume that in 1936 Congress knew that federal courts were construing § 183(a) as applicable to pleasure yachts. If Congress didn't intend for the Limitation Act to apply to pleasure yachts, the 1936 amendments were the time to say so. See, *Air Transport, Etc. v. Profess Air Traffic, Etc.*, 667 F.2d 316, 321 (2nd Cir. 1981). Instead, Congress did just the opposite. In § 183(f) it made sure that limitation remained available for pleasure yachts without subjecting them to the \$60 per ton provisions of § 183(b).

While the statute is clear it is helpful to point out a material part of Senate Report No. 2061 on *Limitation of Shipowners' Liability, May 12, 1936*, 74th Congress, 2d Session (Calendar No. 2165) which states:

The proposed subsection (f) of section 4283 [§ 183, 43a-44a] excludes from the provisions of subsections (b), (c), (d), and (e), pleasure yachts, . . . nondescript self-propelled vessels . . . [and other vessels], even though they may be seagoing vessels within the meaning of section 4289 of the Revised Statutes [§ 188, 46a]; . . . The proposed subsections (b), (c), (d), and (e) of section 4283 are made to apply only to seagoing vessels, but it was the opinion of the committee that even though the above-described vessels should be seagoing vessels, they should be exempted from the operation of the \$60-per-ton minimum liability and left under subsection (a) of section 4283, i.e., the old law. It is not intended by the proposed subsection (f) to change in any way, by implication or otherwise, the meaning of the term "seagoing vessels", or the term "vessels used on lakes or rivers or in inland navigation", as used in section 4289, but only to limit the meaning of the term "seagoing vessels" for the purposes of the \$60-per-ton minimum liability, and the provisions relating thereto.

Id. at 5, emphasis added.

The foregoing language clearly demonstrates the intent of Congress that pleasure yachts and nondescript self-propelled vessels should be included in § 183(a).

Most importantly, 1 U.S.C. § 3 indicates that it is not for this Court to define the word "vessel". Congress has already done so in 1 U.S.C. § 3. It reads:

"The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

According to § 3, then, *every* description of watercraft qualifies as a vessel. There is no requirement of a commercial purpose or use. This Court has held that a yacht or pleasure craft is a vessel under 1 U.S.C. § 3. *Foremost Insurance Co. v. Richardson*, 457 U.S. 668, (1982). See also *St. Hilaire Moya v. Henderson*, 496 F.2d 973 (8th Cir. 1974) and *Complaint of Brown*, *supra*. Neither can it be denied that 1 U.S.C. § 3 should be used to define the word "vessel" as that word is used in 46 U.S.C. § 183(a). In *Evansville & B.G. Packet Co. v. Chevo Cola Bottling Co.*, 271 U.S. 79 (1926), this Court did just that. *Id.* at 80.

Recently, in *Foremost Insurance Co. v. Richardson*, *supra*, this Court said:

... Congress defines the term 'vessel,' for the purpose of determining the scope of various shipping and maritime transportation laws, to include all types of waterborne vessels, without regard to whether they engage in commercial activity. See, e.g., 1 U.S.C. § 3 [1 USCS § 3] ("'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water").

Id. at 676.

3. Logic, Public Policy and Basic Fairness Require That Pleasure Vessels Be Given The Benefit of Limitation of Liability

Neither logic nor public policy supports a practice of allowing "commercial" interests to limit liability while denying that right to pleasure and recreational boat owners.

In the first place, carving out a pleasure boat exception would require that a line be drawn between "pleasure boating" and "commercial boating." In *Foremost Insurance Co. v. Richardson*, supra, this Court rejected such a distinction because of the uncertainties sure to be created:

Yet, under the strict commercial rule proffered by petitioners, the status of the boats as "pleasure" boats, as opposed to "commercial" boats, would control the existence of admiralty jurisdiction. Application of this rule, however, leads to inconsistent findings or denials of admiralty jurisdiction similar to those found fatal to the locality rule in *Executive Jet*. Under the commercial rule, fortuitous circumstances such as whether the boat was, or had ever been rented, or whether it had ever been used for commercial fishing, control the existence of federal-court jurisdiction. The owner of a vessel used for both business and pleasure might be subject to radically different rules of liability depending upon whether his activity at the time of a collision is found by the court ultimately assuming jurisdiction over the controversy to have been sufficiently "commercial." We decline to inject the uncertainty inherent in such line-drawing into maritime transportation. Moreover, the smooth flow of maritime commerce is promoted when all vessel operators are subject to the same duties and liabilities.

Id. at 676.

Just last term, in *Sisson v. Ruby*, supra, this Court again declined to draw a distinction between "pleasure boating" and "commercial boating" in defining the limits of admiralty jurisdiction:

Although . . . protecting commercial shipping is at the heart of admiralty jurisdiction, we also note that interest

'cannot be adequately served if admiralty jurisdiction is restricted to those individuals actually engaged in commercial maritime activity. This interest can be fully vindicated only if all operators of vessels on navigable waters are subject to uniform rules of conduct. The failure to recognize the breadth of this federal interest ignores the

potential effect of noncommercial maritime activity on maritime commerce . . . '

Id. at ____ citing *Foremost Insurance Co. v. Richardson*, *supra*, at 674-675.

Is a yacht with a paid, professional master and crew a pleasure vessel or a commercial vessel? Is a yacht chartered to a friend for an agreed consideration a pleasure or a commercial vessel? How would you classify a yacht owned by a business corporation and used for corporate public relations purposes? What of a sightseeing boat carrying passengers for hire?

Creating a pleasure boat exception would also constitute bad public policy. Presumably, a vessel carrying passengers for hire would be a commercial vessel, no matter how large or small the vessel. The owner of such a vessel—one who charged a fee for providing transportation—could limit his liability; yet the generous host who gave a friend a ride in his yacht could not. And the commercial operator is the one which is more likely, due to regulations and financing agreements, to carry substantial liability insurance. The small boat owner, who would, under petitioner's theory, not have the protection of the Act, would be more likely to be uninsured or have low insurance limits.

There is another reason why it would be poor policy to effect piecemeal charges in the Maritime Law relating to pleasure vessels. The Maritime Law is a complex corpus of rules, concepts and legal practices which are interdependent. No one rule, concept or practice should be changed without careful consideration of the effect that change will have on other rules, concepts and practices in the corpus.

CONCLUSION

For the reasons discussed above, Caskie's Petition for Writ of Certiorari should be denied.

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Respectfully submitted,

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